

WILLIAM S. SESSIONS TO BE DIRECTOR OF THE FEDERAL
BUREAU OF INVESTIGATION

SEPTEMBER 15, 1987.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany the nomination of William Sessions to be Director of the Federal
Bureau of Investigation]

The Committee on the Judiciary, having had under consideration the nomination of William S. Sessions of Texas to be Director of the Federal Bureau of Investigation, reports favorably thereon and recommends that the nomination be confirmed.

The Committee held one full day of public hearings on the nomination on September 9, 1987. The nominee was questioned at length on a variety of subjects pertaining to the operation and management of the FBI, including the application of constitutional protections to Bureau activities. He also answered numerous additional written questions submitted by Committee members. Six public witnesses, including representatives of the law enforcement community and the Mexican-American Legal Defense and Education Fund, also testified at the hearing, and several organizations prepared written statements for inclusion in the hearing record.

In considering this nomination, the Committee reviewed the hearings and final reports of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church" Committee)¹ and the Senate Select Committee to Study Undercover Activities of Components of the Department of Justice (the "Abscam" Committee).² The Judiciary Committee also reviewed past proposals for a statutory charter for the FBI,³ House

¹ Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Hearings, Final Report, S. Rep. No. 755, 94th Cong., 2d Sess. (1976)

² Senate Select Committee to Study Undercover Activities of Components of the Department of Justice, Hearings, Final Report, S. Rep. No. 682, 97th Cong., 2d Sess. (1982).

³ FBI Statutory Charter: Hearings Before the Senate Judiciary Committee, 95th Cong., 2d Sess. (1978); S. 1612, The FBI Statutory Charter: Hearings Before the Senate Judiciary Commit-

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and Senate hearings on the Attorney General's non-classified investigation guidelines,⁴ numerous reports issued by the General Accounting Office,⁵ and both House and Senate authorization hearings on the FBI. In addition, the Judiciary Committee consulted extensively with the Senate Select Committee on Intelligence and reviewed several Intelligence Committee reports⁶ in reference to the FBI's counterintelligence and national security responsibilities.

William S. Sessions, the Chief Judge of the United States District Court for the Western District of Texas, is 57 years old and was born in Fort Smith, Arkansas. He served in the U.S. Air Force during the Korean war and rose to the rank of first lieutenant, receiving an honorable discharge in 1955. The nominee served as a member of the Air Force reserve until his retirement in 1970 at the rank of captain. After his active duty military service, he completed his undergraduate education at Baylor University, where he went on to law school, receiving his LL.B. degree in 1958.

From 1959 to 1969, he was engaged in the private practice of law in Waco, Texas. In 1969, he was appointed chief of the Government Operations Section of the Criminal Division, U.S. Department of Justice. During his tenure as section chief, he was responsible for enforcement of the Selective Service Act, the Foreign Corrupt Practices Act, and federal obscenity statutes. In 1971, President Nixon appointed Mr. Sessions to be the U.S. Attorney for the Western District of Texas. He served in this post until 1974, when President Ford nominated him to serve on the United States District Court for the Western District of Texas. Judge Sessions has served as the Chief Judge of the Western District of Texas since 1980.

Judge Sessions has participated in numerous public service forums, with attention to improving the administration of justice at the federal level. He served as chairman of the ethics committee

tee, 96th Cong., 1st Sess. (1979); FBI Charter Proposals and the Attorney General's Domestic Intelligence Guidelines: Hearings Before the Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, 95th Cong., 1st Sess. (1977).

⁴ Domestic Security Investigation (Levi) Guidelines: Hearings Before the Subcommittee on Security and Terrorism of the Senate Judiciary Committee, 97th Cong., 2d Sess., (1982); FBI Domestic Security Guidelines: Hearings Before the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, 98th Cong., 1st Sess. (1983); FBI Undercover Activities: Hearings Before the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, 98th Cong., 1st Sess. (1983); S. 804, the Undercover Operations Act: Hearing Before the Subcommittee on Criminal Law of the Senate Judiciary Committee, 98th Cong., 2d Sess. (1984).

⁵ General Accounting Office, Report to the House Committee on the Judiciary by the Comptroller General of the United States, FBI Domestic Intelligence Operations—Their Purpose and Scope: Issues That Need To Be Resolved (1976); General Accounting Office, Report to the House Committee on the Judiciary by the Comptroller General of the United States, FBI Domestic Intelligence Operations: An Uncertain Future (1978); General Accounting Office, Report to the House Judiciary Committee by the Comptroller General of the United States, the Federal Bureau of Investigation Needs Better Representation of Women and Minorities (1978); General Accounting Office, Report to the House Committee on the Judiciary by the Comptroller General of the United States, Resources Devoted by the Department of Justice to Combat White-Collar Crime and Public Corruption (1979); General Accounting Office, Report to the Attorney General and Secretary of the Treasury, Federal Criminal Laboratories Lack a Clear Policy for Assisting State and Local Jurisdictions (1980); General Accounting Office, Report to the Congress by the Comptroller General of the United States, Faster Processing of DoD Personnel Security Clearances Could Avoid Millions in Losses (1981); General Accounting Office, Report to the House Governmental Affairs Committee, FBI-DEA Task Forces: An Unsuccessful Attempt at Joint Operations (1982); General Accounting Office, Report to the House Judiciary Committee, FBI Voice Privacy: Cost, Status, and Future Direction (1987).

⁶ Senate Select Committee on Intelligence, the Foreign Intelligence Surveillance Act of 1978: The First Five Years, S. Rep. No. 660, 98th Cong., 2d Sess (1984); Senate Select Committee on Intelligence, Meeting the Espionage Challenge: A Review of United States Counterintelligence and Security Programs, S. Rep. No. 522, 99th Cong., 2d Sess. (1986).

of the Federal Bar Association and as a Director of the Federal Judicial Center in Washington, D.C.

Judge Sessions's record clearly demonstrates that he possesses the qualifications to be the next director of the Federal Bureau of Investigation. He has extensive experience in the criminal justice system, experience he gained while a section chief in the Criminal Division of the U.S. Department of Justice and as the U.S. Attorney for the Western District of Texas. In these positions, he was directly responsible for the prosecution of major criminal cases, including significant drug trafficking, public corruption, and civil rights cases. As a federal district court judge, he presided over numerous complex criminal and civil cases, including the case involving the murder of Judge John H. Wood, the first federal judge killed in this century. In addition, his record demonstrates a sensitivity to individual rights and civil liberties, an important qualification for the director of the FBI. In sum, Judge Sessions's record demonstrates that he is a tough but fair minded man, whose experience, intellect, and character qualify him to lead the Federal Bureau of Investigation.

During the hearing, the Committee questioned Judge Sessions on a broad range of issues relating to the FBI's investigative operations, the Bureau's counter-intelligence responsibilities, and the management of the FBI. Much of the Committee's questioning focused on three issues: (1) the need for the Bureau to be shielded from political and partisan influence; (2) the need for the FBI to continue to pursue several high-priority investigative programs, including criminal law enforcement and counter-intelligence activities; and (3) the appropriate balance between aggressive law enforcement and counter-intelligence operations and respect for the civil rights and civil liberties of all Americans.

Specifically, the Committee's questioning was directed to eight areas of the FBI's operations, among others:

- (1) The importance of shielding the FBI from improper partisan influences and political manipulation;

- (2) Ensuring that the FBI cooperates fully with Congress in the discharge of its oversight responsibilities;

- (3) The need for the Bureau to pursue aggressively its law enforcement responsibilities, and to maintain and strengthen its current high-priority investigative programs;

- (4) The necessity for the FBI to retain its role as the lead agency with respect to national counter-intelligence policy leadership, and to prioritize these vital national security activities;

- (5) The need for the Bureau to operate within the Constitution and laws of the United States, and for the Bureau to respect the civil rights and civil liberties guaranteed to all Americans;

- (6) The issue of whether Congress should enact a legislative charter for the FBI that would grant the Bureau explicit authority to conduct criminal and civil investigations;

- (7) The need for the director to efficiently and effectively manage the Bureau's operations, and to respond to the management problems that confront the FBI as it enters the next decade; and

(8) Ensuring that the FBI cooperates fully with other federal and state and local law enforcement agencies in the partnership against crime and drug trafficking in America.

Judge Sessions testified in response to these questions as follows:

(1) *The Independence of the FBI*.—In response to questions from Chairman Biden concerning the need to keep the FBI free from partisan influence and political manipulation, Judge Sessions testified:

. . . I asked [the Attorney General . . . whether he saw any impediment at all to my carrying out my oath to fully and completely investigate, no matter where that might fall, and he gave me assurance that . . . he would expect me to do that fully, and I relied on that.

In response to Chairman Biden's suggestion that Judge Sessions keep a log of contacts between the White House and the FBI leadership and Congress and the FBI leadership, Judge Sessions replied, "without qualification, absolutely."

The nominee also testified that if confronted with a request that might be improper, he would require the request to be put in writing, and that if, after careful review, he still believed the request to be improper he would refuse to comply. In addition, the nominee testified that he would inform the Attorney General of his refusal to comply, and if he felt that the Attorney General's response was insufficient or inappropriate, that he would speak directly to the President, and/or inform the appropriate oversight Committees of Congress.

(2) *Cooperation with Congress*.—Senator Heflin questioned the nominee as to whether he felt any hesitancy about coming to Congress to testify when requested to do so. Judge Sessions responded:

Personally, absolutely not . . . I have [a] direct responsibility, and I can't imagine not sharing to the extent I'm able to do that . . . I think you're entitled to hear from the director. And I intend to do that.

(3) *Law Enforcement Priorities*.—In response to questions from Senator Thurmond, the Ranking Minority Member, as to whether Judge Sessions believed he would continue the Bureau's priority investigative programs, which now include organized crime, terrorism, narcotics, and white-collar crime, Judge Sessions testified:

I do not see any great departure from the investigative obligations and priorities that Judge Webster set and the Bureau followed. I know each of those is a really great top-notch concern to the country's well-being. I do believe that the priorities which [Judge Webster] established are the correct ones, but as we all know, times change as times will, and you have to be able to respond effectively.

In discussing the Bureau's investigative priorities, Senator Kennedy noted the FBI's important responsibilities in civil rights cases. Asked what priority he plans to give civil rights investigations, Judge Sessions responded:

One of the things I learned early on as a United States Attorney was that the Bureau had an absolute obligation

in civil rights matters to do an immediate investigation. My record as a United States Attorney will reflect that I believe very strongly [that civil rights cases] have to be pursued.

Senator Leahy expressed serious concern over the threat to this country posed by national and international terrorist organizations. In response to Senator Leahy's questions, Judge Sessions indicated that terrorism was one of the FBI's top investigative priorities, and he committed to reviewing the FBI's relationship with other law enforcement agencies to ensure that the U.S. Government's counterterrorist activities were fully coordinated.

(4) *Foreign Counterintelligence.*—Several Committee members who serve on both the Judiciary and Intelligence Committees questioned the nominee extensively on the FBI's national security responsibilities in the area of foreign counter-intelligence. Senator DeConcini emphasized the importance of the FBI director's role as chairman of the National Security Council's Interagency Group on Counterintelligence (IG-CI). By virtue of this position, the FBI is the lead agency with respect to national counterintelligence policy. In response to written questions, Judge Sessions stated:

I believe that [the chairmanship of the IG-CI] is an extremely important role for the director of the FBI and it is my plan to retain responsibility for chairing the IG-CI and for providing leadership for the counterintelligence program of the United States.

Senator Specter also questioned the nominee about his opinion as to whether the FBI should be required to obtain a court-ordered warrant for foreign counterintelligence searches under procedures similar to those in the Foreign Intelligence Surveillance Act. Judge Sessions committed to reviewing this important issue and providing comments to the Committee either directly or through the Attorney General.

(5) *Constitutional Protections.*—Committee members questioned Judge Sessions extensively about his constitutional philosophy, his views on the protections afforded to U.S. citizens by the First, Fourth, and Fifth Amendments of the Constitution, and the need for the Bureau to operate within the Constitution and the laws of the United States. In response to written questions about FBI investigations of citizens exercising their lawful First Amendment rights, Judge Sessions stated:

. . . the FBI has no intent to investigate individuals or organizations involved in lawful, constitutionally protected activities. . . . An investigation cannot be initiated solely upon an individual's advocacy of unpopular ideas or political dissent.

In regard to the Fourth Amendment, Senator Thurmond questioned the nominee about his views on the exclusionary rule. Judge Sessions testified:

As a judge, I know that the protections that are afforded by the exclusionary rule are extremely important to the fair play, and the proper carrying out of the law enforce-

ment responsibility. . . . And my own belief is, in the role as director of the FBI, that I would encourage a careful review of [the exclusionary rule], and a careful carving out, if there can be exceptions. But, by and large, I am happy with it the way it is, because I know that as difficult as it is for law enforcement in the courts, that it protects the rights of citizens and that is important.

Chairman Biden also questioned the nominee about his views on the *Miranda* rule and its effect on law enforcement. In response, Judge Sessions testified:

I know that [*Miranda*] is always an imposition of initial burden upon law enforcement people, but I am convinced that the burden is an appropriate one. And I am convinced that the ability to be fully warned does not badly damage the ability to investigate. Sometimes you pay very serious consequences, of course. But, by and large, I have agreed totally with the law as it is and will enforce the law as it is.

(6) *FBI Statutory Charter*.—Committee members questioned the nominee on his views about the need to enact a statutory charter for the FBI. Past proposals, including legislation introduced by Senators Kennedy, Biden, DeConcini, Thurmond, and Mathias in 1979, would grant the Bureau explicit authority to conduct criminal and civil investigations. In response to questions from Chairman Biden, Judge Sessions committed to reviewing the FBI's existing authorities and past charter proposals, and to meeting with the Committee in the future to determine whether a statutory charter is necessary and/or desirable.

In addition, Judge Sessions indicated that while he had not fully reviewed the Attorney General's investigative guidelines, he believed that the current evidentiary standards for the initiation of preliminary inquiries and full investigations were "reasonable" and that he would conduct a full review of the guidelines upon taking office.

(7) *Personnel Issues*.—Several Committee members expressed concern over personnel issues, including the recruitment and promotion of minority and women agents. In response to questions about the Bureau's small percentage of minority and women agents, Judge Sessions testified:

I believe that the Federal Bureau of Investigation would benefit significantly from having a reflection of the makeup of this country, and by including those persons who might have at some time, in some way, been excluded . . .

The nominee also was questioned about FBI estimates that one-half of the Bureau's agents would leave within the next five to seven years. Judge Sessions indicated that he was alarmed by such statistics, and that he intended to pursue an approach that included aggressive recruitment and incentives for personnel to stay with the Bureau. Chairman Biden expressed concern over the loss of experienced supervisory personnel due to this high turnover, while noting the opportunity to address the concerns about minority and

women agents as the Bureau reviewed its recruitment and promotion activities.

(8) *Relationship with State and Local Agencies.*—Several Committee members, including the Chairman and Ranking Minority Member, expressed concern about the relationship between the FBI and state and local law enforcement agencies. In response to specific questions, Judge Sessions testified:

I think it is absolutely critical, absolutely critical to United States law enforcement throughout this country that we have the maximum cooperation that can be extended, so that you have a joint effort between local, state and federal agencies.

The Committee received testimony from six public witnesses; Chief Joe D. Casey, President, International Association of Chiefs of Police; Darrell Stephens, Executive Director, Police Executive Research Forum; Dr. Elsie Scott, Executive Director, National Organization of Black Law Enforcement Executives; L. Cary Bittick, Executive Director, National Sheriffs Association; Sterling Epps, Legislative Co-Chairman, Federal Law Enforcement Officers Association; and Mario Moreno, Associate General Counsel, Mexican-American Legal Defense and Education Fund. All five representatives from the law enforcement community spoke in favor of the nomination of Judge Sessions to be the director of the FBI. In discussing the nominee's qualifications to be the director of the FBI, they noted his extensive law enforcement experience, his commitment to the rule of law, and his high degree of personal integrity.

Mr. Moreno did not speak to the nomination of Judge Sessions, but instead discussed his organization's concerns over the FBI's hiring and promotion practices with respect to Hispanic agents. Mr. Moreno noted that while the percentage of Hispanics in the American population exceeds 7 percent, only 4 percent of the Bureau's special agents are Hispanic, and only 1.3 percent of the FBI's senior level executives are Hispanic. He recommended that the next director consider establishing a task force on the hiring and promotion of Hispanic agents.

CONCLUSION

On the basis of Judge Sessions's record of distinguished public service and his responses to extensive questioning during the confirmation hearing, the Committee on the Judiciary recommends, by a unanimous vote, that William S. Sessions be confirmed by the U.S. Senate to be Director of the Federal Bureau of Investigation.